A.F.R.

(40)

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : Hon'ble Shri Lal Chand Bhadoo, J. and
Hon'ble Shri Vijay Kumar Shrivastava, J.

Criminal Appeal No.293 of 2001

Dhana @ Dhanaulal Nagwanshi

Versus

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
V.K.Shrivastava
Judge

HON'BLE SHRI JUSTICE LAL CHAND BHADOO

I agree

Sd/-
L.C.BHADOO
Judge

POST FOR 16-11-2005

Sd/-

16/11/2005

(41)

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : Hon'ble Shri Lal Chand Bhadoo, J. and Hon'ble Shri Vijay Kumar Shrivastava, J.

Criminal Appeal No.293 of 2001

Appellant (In Jail)	:	**Dhana @ Dhanaulal Nagwanshi,** S/o Bhaiyalal Nagwanshi, aged about 49 years, R/o Joshilmati, P.S. Gendatola, District Rajnandgaon (C'garh)
	Versus	
Respondent	:	**State of Chhattisgarh,** Through : P.S. Gendatola, District Rajnandgaon

---

Mr. G.S.Ahluwalia, counsel for the appellant.

Mr. G.K.Beriwal, Deputy Advocate General with Mr. M.P.S.Bhatia, Panel Lawyer for the respondent/State.

J U D G M E N T

(Delivered on 16-11- 2005)

Per Vijay Kumar Shrivastava, J.

This appeal has been directed against the judgment of conviction and order of sentence passed by Sessions Judge, Rajnandgaon on 5-3-2001 in Sessions Trial No.203/2000, whereby the appellant has been held guilty for committing the offence of

murder of Prabhulal and causing voluntarily simple hurt to Bindu Bai and Keshoram punishable under Sections 302 and 324 of the Indian Penal Code and sentenced to undergo imprisonment for life and rigorous imprisonment for 1 (one) year respectively.

2. The material facts for disposal of this appeal are that Bindu Bai, the daughter of the appellant fell in love with Keshoram, the son of the deceased with whom she got herself married against the will and consent of her father, the appellant. Later on, as a result of compromise, Keshoram and Bindu Bai left the Village Joshilmati, and started living in Dalli Rajahara. On 25-10-2000, to celebrate Diwali Festival, Keshoram and Bindu Bai came to their Village Joshilmati. In the night, Bindu Bai was in her house, her father, the appellant came there and started threatening that he will not allow them to live in the village. The appellant assaulted Keshoram and Bindu Bai with knife. As a result, both of them received injuries. When they were quarrelling, deceased Prabhulal came and raised a voice, who is beating his son and daughter-in-law, and instantly, hearing it, the appellant stabbed Prabhulal on his stomach. Prabhulal received grievous injuries. Seeing that some of the villagers coming there, the appellant left all the injured on the spot and ran away. Prabhulal succumbed to the injuries, caused to him by the appellant after few hours in his house.

3. On next morning i.e. 26-10-2000, Keshoram lodged a report in Police Station Gendatola. First Information Report was registered and Station House Officer, Shailendra Singh Jadaun investigated the matter. He prepared Panchnama of the dead body, forwarded the same for autopsy. Dr. Praveen Goswami conducted

autopsy and opined that the cause of death was shock because of excessive severe hemorrhage due to injuries in liver and stomach. Bindu Bai and Keshoram were also referred for medical examination. Dr. S.K.Ahuja examined Bindu Bai and Keshoram and found various injuries on their bodies. Blood stained clothes of Keshoram, Bindu Bai and appellant's were also seized during the investigation. Statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. After completing the investigation, the challan was led in the Court of Judicial Magistrate First Class, Rajnandgaon, who committed the case for trial to the Court of Session.

4. Charges under Sections 324 and 302 of the Indian Penal Code were framed against the appellant and were read over and explained to him, who abjured his guilt and claimed to be tried. His defence was that he is innocent and has been falsely implicated in the case.

5. Dr. Praveen Goswami, P.W.-12 has deposed in his statement that he conducted autopsy over the dead body of Prabhulal. On examination, he found the following injuries : -

> An incised wound present on epigastric region of abdomen obliquely present from left hypodendrium to the right. A piece of intestine has come out of the incised wound. The colour of the intestine is dark, bluish with gaseous distension. On opening the abdomen and measuring depth of wound, it was upto the stomach. The depth was more on right hypochondrium damaging the liver. The size of the wound was 7 cms. x 4 cms. x 11 cms. deep in left hypochondrium and 12 cms. deep in right hypochondrium. The incised wound was extended upto peritoneum and rectus muscles. Internal injury in

stomach was 4 cms. x 2 cms. with blood clots and liquid blood.

He has further deposed that the cause of death was due to shock because of excessive severe hemorrhage due to injuries in liver and stomach. His report is Ex.P-16. The evidence, so far as it relates to the injuries and cause of death is concerned, has not been challenged in cross-examination.

6. Dr. S.K.Ahuja, P.W.-9 has deposed that on 26-10-2000, he examined Bindu Bai, the wife of Keshoram and found following injuries on her body : -

(i) Incised injuries 2.5 cms. x 0.5 cms. over left ring finger.

(ii) Incised injury 1 cm. x 0.5 cm. over left ring and middle finger.

(iii) Abrasion 0.5 cm. x 0.5 cm. between right thumb and index finger.

(iv) Abrasion 0.5 cm. x 0.5 cm. in right fore arm posterior middle part.

He has further deposed that injuries No.1 and 2 were caused by hard and sharp object and others were caused by hard and blunt object. All the injuries are simple in nature. His report is Ex.P-11.

7. He has further deposed that, he also examined Keshoram, son of Prabhulal and found following injuries on his body : -

(i) Incised injury 1.5 cms. x 0.5 cm. x 0.5 cm. in right hand middle finger.

(ii) Linear abrasion 1 cm. x 0.25 cm. over right middle finger.

(iii) Abrasion 1 cm. x 1 cm. over right dorsan of palm.
(iv) Abrasion 1 cm. x 1 cm. over right dorsan of palm.
(v) Abrasion 1 cm. x 1.5 cms. over right wrist.
(vi) Abrasion 1.5 cms. x 1 cm. over left wrist.
(vii) Abrasion 1 cm. x 1 cm. over right ankle.
(viii) Abrasion 1 cm. x 1 cm. over right knee.

Injuries No.1 and 2 were caused by hard and sharp object and other injuries were caused by hard and blunt object. His report is Ex.P-12.

8. From the evidence of Dr. Praveen Goswami, P.W.-12 and Dr. S.K.Ahuja, P.W.-9, it was proved that death of Prabhulal was homicidal and it was caused by inflicting injuries on his stomach and it was also proved that Bindu Bai and Keshoram were injured by inflicting injuries by some hard and sharp object.

9. Keshoram, P.W.-1, Bindu Bai, P.W.-2 and Gaukaran, P.W.-4 are the eye-witnesses. Bindu Bai, P.W.2 is the daughter of the appellant and Keshoram, P.W.-1 is his son-in-law. Keshoram, P.W.-1 and Bindu Bai, P.W.-2 are the injured witnesses. From their evidence, it is clear that the appellant came to the house of Keshoram and asked Keshoram and Bindu Bai to go back from the village and assaulted both of them by knife. Keshoram, P.W.-1, Bindu Bai, P.W.-2 and Gaukaran, P.W.-4 have deposed that the appellant Dhanna Prasad stabbed Prabhulal. Prabhulal received injuries on his stomach. The evidence has been supported by other witnesses Baliram, P.W.-3 and Nammuram, P.W.-5. Baliram, P.W.-3 has deposed that Gaukaran came to his house and apprised that his father Prabhulal has been stabbed with knife by Dhanna. Therefore, he went to the house of Prabhulal and saw the injured Prabhulal, who had injuries over his stomach, wherefrom blood was

oozing. Prabhulal remained alive for about 2 hours and died thereafter. Nammuram, P.W.-5 has also deposed that Gaukaran, running towards the village, was raising a voice that Dhanna Prasad has killed his father. He was also raising voice that Dhanna has stabbed Prabhulal with knife. He went to the spot and saw the injured Prabhulal. Keshoram was there, who also apprised that Dhanna has stabbed his father. The evidence of eye-witnesses have also been corroborated by the F.I.R., Ex.P-1 duly proved by Keshoram, P.W.-1 and Shailendra Singh Jadaun, P.W.-13. The evidence of eye-witnesses is also supported by the medical evidence of Dr. S.K.Ahuja, P.W.-9 and Dr. Praveen Goswami, P.W.-12 as also the medical reports Exs.P-11, P-12 and P-16. After minute examination of all the statements, we find nothing substantial to discredit the aforesaid version.

10. From the aforesaid evidence, the prosecution has successfully established that the appellant caused injuries to Keshoram and Bindu Bai by knife, a sharp edged weapon, and also caused the death of Prabhulal by causing grievous injuries on his vital part i.e. stomach by stabbing the knife.

11. Learned counsel for the appellant vehemently contended that in case it is found that the appellant is guilty of causing homicidal death of Prabhulal, then his case is covered under Section 304 of the Indian Penal Code and not under Section 302 of the Indian Penal Code. He further contended that the appellant had no intention to kill Prabhulal, but during the struggle, in the whisper of moment, the appellant could not control his anger and as a result thereof he stabbed the deceased, therefore, instead

of holding the appellant guilty under Section 302 of the Indian Penal Code, he should have been held guilty under Section 304 of the Indian Penal Code and punished accordingly.

12. Murder has been defined under Section 300 of the Indian Penal Code and made punishable under Section 302 of the Indian Penal Code. Culpable homicide, not amounting to murder, has been made punishable under Section 304 of the Indian Penal Code. In both the provisions, it is necessary that the death should be culpable homicide. For murder, if the offence pertains to those which have not been excepted under Section 300 of the Indian Penal Code, the same will be punishable under Section 302 of the Indian Penal Code, but if the case covers under any of the Exceptions, then the offence will be punishable under Section 304 of the Indian Penal Code. The further contention of learned counsel for the appellant is that the appellant, without premeditation, in a sudden fight, in a whisper of moment, stabbed Prabhulal, therefore, his act is covered under Exception 4 to Section 300 of the Indian Penal Code. Exception 4 to Section 300 of the Indian Penal Code reads as below : -

> ***Exception*** **4.** – "Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of a passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.
>
> ***Explanation***. – It is immaterial in such cases which party offers the provocation or commits the first assault."

13. Hon'ble the Apex Court, rendering the judgment in the case of **Ghapoo Yadav and others vs. State of M.P., reported in (2003) 3 SCC 528** observed in para 10 that –

Para 10 : "The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused : (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in the Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on

> account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"."

14. For bringing an offence under Exception 4 to Section 300 of the Indian Penal Code, following conditions are required to be proved : -

(i) The act must be without premeditation,

(ii) The injury must have caused in a sudden quarrel with victim, and

(iii) The offender has not taken undue advantage or acted in a cruel or unusual manner.

15. Here in the instant case, overwhelming evidence has been adduced to show that the appellant came on scene of occurrence with a planning and to carry out his plan he was carrying a deadly weapon knife. He came on the spot and insisted Keshoram and Bindu Bai to leave the village forthwith and started assaulting Keshoram and Bindu Bai. No quarrel took place with the victim Prabhulal. Prabhulal even did not intervene the quarrel which was taking place between the appellant and his daughter and son-in-law. Prabhulal came to his house where the appellant, his son Keshoram and daughter-in-law Bindu Bai were quarreling.

Prabhulal had only enquired as to who is beating his son and daughter-in-law, and instantly, the appellant stabbed on the stomach of Prabhulal. Therefore, in the instant case, it was established that the appellant came to the place of occurrence with a planning and though no quarrel or fight took place between Prabhulal and the appellant nor Prabhulal intervened the quarrel but the appellant stabbed on his stomach with deadly weapon knife. Injury was inflicted with a great force. As a result of that, intestine came out through the wound. In this way, it was proved that the appellant came with premeditation and without having any quarrel with Prabhulal in an unusual cruel manner stabbed Prabhulal, as a result of that, Prabhulal died. Therefore, the act of the appellant does not come within the Exception 4 to Section 300 of the Indian Penal Code. Therefore, the contention raised by the appellant to convert the finding of lower Court and to punish the appellant under Section 304 of the Indian Penal Code has no force.

16. Learned trial Court considered all the evidence on record as well as the circumstances and legal question raised by the appellant regarding the applicability of Section 304 of the Indian Penal Code in this case and after due appreciation rightly held the appellant guilty for committing the offence under Sections 324 and 302 of the Indian Penal Code and accordingly sentenced the appellant in conformity with the law. Therefore, we are of the considered opinion that, finding and sentence recorded by the trial Court does not call for any interference by this Court in its appellate jurisdiction.

17. In the result, the conviction and sentence passed by the trial Court is maintained and the appeal is dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

G.Singh